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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ERIC BENEDICT, RICHARD BOWDERS,
KILRICANOS VIEIRA, and DAVID
MUSTAIN on behalf of themselves and
classes of those similarly situated,

Plaintiffs,

v.

HEWLETT-PACKARD COMPANY,

Defendant.

Case No. C 13-0119 BLF

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR CLASS
CERTIFICATION PURSUANT TO
RULE 23**

Date: July 30, 2015
Time: 9:00 a.m.
Judge: Hon. Beth Labson Freeman
Crtrm: 3, 5th Floor

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that, on July 30, 2015 at 9:00 a.m., before the Honorable Beth Labson Freeman in Courtroom 3 of the U.S. District Court for the Northern District of California – San Jose Division, Plaintiffs Eric Benedict, Kilricanos Vieira, and David Mustain (collectively, “Plaintiffs”) will move for an order certifying this case as a class action.

Pursuant to Federal Rule of Civil Procedure (“Rule”) 23, Plaintiffs move for certification of the classes below (“State Classes”), or such other classes or subclasses that may be appropriate:

California Class: All persons employed in California as a Technical Solutions Consultant I, II, or III by HP’s (1) Enterprise Group, Customer Solutions Center; (2) HP Software Support Delivery / IMBU Support; and/or (3) HP Software Enterprise Security Products organization at any time between January 10, 2009 and the present who was designated an “Individual Contributor” and was classified as exempt from the overtime pay requirements of California.

Colorado Class: All persons employed in Colorado as a Technical Solutions Consultant I, II, or III by HP’s (1) Enterprise Group, Customer Solutions Center; (2) HP Software Support Delivery / IMBU Support; and/or (3) HP Software Enterprise Security Products organization at any time between January 10, 2010 and the present who was designated an “Individual Contributor” and was classified as exempt from the overtime pay requirements of Colorado.

Massachusetts Class: All persons employed in Massachusetts as a Technical Solutions Consultant I, II, or III by HP’s (1) Enterprise Group, Customer Solutions Center; (2) HP Software Support Delivery / IMBU Support; and/or (3) HP Software Enterprise Security Products organization at any time between January 10, 2010 and the present who was designated an “Individual Contributor” and was classified as exempt from the overtime pay requirements of Massachusetts.¹

Plaintiffs also move the Court to appoint Mr. Benedict as class representative for the California Class, Mr. Mustain as class representative for the Colorado Class, and Mr. Vieira as class representative for the Massachusetts Class. Finally, Plaintiffs move for the appointment of Lieff Cabraser Heimann & Bernstein, LLP (“LCHB”) and Outten & Golden LLP (“O&G”), as Class Counsel.

¹ Prior to 2012, the Customer Solutions Center was divided into two groups: GCE and TC&E. In 2012, these groups were combined to form the Customer Solutions Center. The class definition includes Technical Solutions Consultants I, II, or III in the GCE and TC&E groups from 2009 (California) or 2010 (Colorado and Massachusetts) through 2012, and in the Customer Solutions Center from 2012 to the present.

This motion is made pursuant to Rule 23 and is based on this Notice of Motion and Motion; the supporting Memorandum of Points and Authorities; the accompanying declarations of Kelly M. Dermody (“Dermody Decl.”); Jahan C. Sagafi (“Sagafi Decl.”); Marc A. Pilotin (“Pilotin Decl.”); Eric Benedict (“Benedict Decl.”); David Mustain (“Mustain Decl.”); Kilricanos Vieira (“Vieira Decl.”); the 15 declarations of members of the State Classes, presented in the compendium of Class Member Declarations;² and any papers filed in response, the argument of counsel, and all papers and records on file in this matter.

STATEMENT OF ISSUES TO BE DECIDED

The issues to be decided are:

1. Whether the Court should certify the proposed State Classes identified above pursuant to Rule 23;
2. Whether the Court should appoint Mr. Benedict as the California Class representative, Mr. Mustain as the Colorado Class representative, and Mr. Vieira as the Massachusetts Class representative; and
3. Whether the Court should appoint LCHB and O&G as Class Counsel.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Eric Benedict, David Mustain, and Kilricanos Vieira are former Technical Solutions Consultants (“TSCs”) who worked for HP in California, Colorado, and Massachusetts respectively. They seek overtime pay and other relief for themselves and other TSCs, whom HP has uniformly classified as exempt from overtime pay requirements.

Employees may be exempt from state overtime pay requirements pursuant to one or more exemptions, such as the “administrative employee exemption” or the “computer professional employee exemption.”³ Regardless of which exemption HP may assert here, the legal issue of

² For ease of reference throughout this brief, all Class Member declarations, other than those of the named Plaintiffs, are referred to as “Decl. #,” where “#” refers to the corresponding tab number in the concurrently filed compendium of Class Member Declarations.

³ Each state’s administrative employee exemption is substantially similar for purposes of this Motion. For instance, each requires a purportedly exempt employee to perform work “directly related to management policies or general business operations.” 8 Cal. Code. Regs. § 11040(1)(A)(2)(a)(i); 7 Colo. Code Regs. § 1103-1(5); 454 Mass. Code Regs. § 27.03(3) (adopting meaning of “administrative” employee under 29 C.F.R. § 541.200). California law also contains a computer professional employee exemption, which requires an employee to engage primarily in work “that is intellectual or creative and that requires the exercise of discretion and independent judgment” and at least one of the following: “[t]he application of systems analysis

whether an employee properly falls within the exemption depends on what an employee does – e.g., her primary job duties. *See, e.g., Nelson v. Avon Prods., Inc.*, No. 13–cv–02276–BLF, 2015 WL 1778326, at *9-10 (N.D. Cal. Apr. 17, 2015) (Freeman, J.). Certification of a class of employees alleging misclassification is appropriate if the Court can determine, for the class as a whole based on common evidence, what class members do. *Id.* Plaintiffs make that showing here.

Previously, the Court⁴ found that evidence suggested that TSCs “share common work duties,” and therefore conditionally certified this case as a Fair Labor Standards Act (“FLSA”) collective action. Order Granting Pls.’ Mot. for Cond’l FLSA Coll. Action Cert. (“FLSA Order”) at 16:19-20 (ECF #175). Based on the limited discovery available at that time, the Court found that,

under HP’s Job Architecture Policy, employees are categorized into job titles based on their *primary job duties* and employees with the same job title *perform the same general job tasks* as identified in a standardized job description.

Id. at 15:16-18 (emphases added). The Policy, the Court explained, provides that “employees performing the same work are assigned the same job title, as the system requires managers to assign job titles based on the nature of the job.” *Id.* at 6:22-24. These facts, among others, led the Court to hold that TSCs are similarly situated for purposes of the FLSA.

The additional common evidence that Plaintiffs now present shows that TSCs perform the same primary duties, rendering this case appropriate for certification under Rule 23. As HP’s Rule 30(b)(6) witnesses testified and Class Member declarations confirm, TSCs within the State Classes are quintessential “help desk” employees, serving as the first contact HP customers have with HP’s technical support. Various HP process documents, technical documents, service level agreements (“SLAs”), and other instructions define what a TSC does. Those documents and

techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications,” “[t]he design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications,” or “the documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.” 8 Cal. Code. Regs. § 11040(1)(A)(3)(h)(i)-(iii).

⁴ References to “the Court” encompass actions taken by Judge Koh, to whom this case was previously assigned.

1 agreements likewise structure and restrict a TSC's role. For instance, when a customer's problem
 2 reveals a bug in the coding of an HP product, TSCs are required to elevate the problem promptly
 3 to those in the Engineering or "R&D" department, people outside the State Classes.

4 Given this evidence common to all Class Members, which reinforces the Court's previous
 5 findings that TSCs perform the same work, class certification under Rule 23 is appropriate. For
 6 these reasons and those stated below, the Court should certify the State Classes, appoint Plaintiffs
 7 as class representatives, and appoint LCHB and O&G as Class Counsel.

8 **I. BACKGROUND**

9 **A. Plaintiffs Are Former TSCs Who Assert Claims under California, Colorado, 10 and Massachusetts Law.**

11 Mr. Benedict and Mr. Vieira are former TSC IIIs. Benedict Decl. ¶¶ 2-3; Vieira Decl.
 12 ¶¶ 2-3. Mr. Mustain is a former TSC II. Mustain Decl. ¶¶ 2-3.

13 Mr. Benedict filed this action on January 10, 2013, seeking to represent a nationwide
 14 collective action of employees under the FLSA and a California class of employees under
 15 California law. (ECF #1.) He asserts claims for unpaid overtime, waiting time penalties, failure
 16 to maintain adequate and accurate wage statements, failure to provide meal and rest breaks, and
 17 violations of California's Unfair Competition Law ("UCL").

18 On May 31, 2013, Plaintiffs filed their First Amended Complaint, adding Mr. Vieira as a
 19 named plaintiff and claims on his behalf and on behalf of a proposed Massachusetts class under
 20 that state's wage and hour laws.⁵ (ECF #64.) Mr. Vieira asserts claims for unpaid overtime and
 21 HP's failure to maintain adequate and accurate wage statements.

22 On July 11, 2014, Plaintiffs filed their Second Amended Complaint, adding Mr. Mustain
 23 as a named plaintiff and claims on his behalf and on behalf of a proposed Colorado class under
 24 that state's wage and hour laws. (ECF #258.) Mr. Mustain asserts claims for unpaid overtime
 25 and HP's failure to maintain adequate and accurate wage statements.

26
 27 ⁵ Although the First Amended Complaint also included Richard Bowders as a named plaintiff and
 28 claims on his behalf and on behalf of a proposed Maryland class under that state's wage and hour
 laws, Plaintiffs do not seek certification of such a class at this time.

1 **B. HP’s Job Architecture Policy Delineates the Primary Job Duties of Technical**
 2 **Solutions Consultants.**

3 As noted above, the Court conditionally certified this case as a collective action under the
 4 FLSA, holding that TSCs are similarly situated. The Court made two findings relevant to
 5 Plaintiffs’ current motion. First, the Court found that TSCs are “uniformly subjected to the same
 6 policy that classifies them as exempt under FLSA.” FLSA Order at 14:18-19. Second, the Court
 7 found that TSCs “share similar job duties.” *Id.* at 16:17-19.

8 The Court’s conclusions were based in part on HP’s Job Architecture (“JA”) Policy,
 9 which HP defines as a common system to “classify employees using a global hierarchy of jobs.”
 10 Pilotin Decl., Ex. 1⁶ at HP00001263; *id.*, Ex. 3 (Albert Depo.) at 86:25 (describing Job
 11 Architecture as a “common system”). HP adopted the JA Policy so that it could apply “a more
 12 standardized approach” to organizing its employees. Albert Depo. at 85:12-13; *see also id.* at
 13 86:13-14 (noting JA Policy was adopted to “better manage our employees and treat them on a
 14 consistent basis”); *id.* at 143:8-11 (noting JA Policy’s focus “was to add consistency, was to add
 15 structure to what we had, was to add simplicity and just make it a little bit more streamlined and
 16 easier to manage the workforce”). As Plaintiffs describe below, this policy provides common
 17 evidence supporting certification under Rule 23.

18 **1. HP’s Job Architecture Policy applies companywide and categorizes**
 19 **employees based on their job duties.**

20 As the Court found previously, the JA Policy mandates that “employees performing the
 21 same work are assigned the same job title, as the system requires managers to assign job titles
 22 based on the nature of the job.” FLSA Order at 6:22-24; Albert Depo at 99:1-4 (“[T]he
 23 architecture was designed so that you map the employees based upon the content of the work that
 24 they’re performing.”); *id.* at 138:25-139:3 (explaining job title assignment focuses “on what is the
 25 content of that job, and therefore . . . the responsibilities that that person is going to be assigned
 26 to”); *id.* at 140:8-10 (explaining that managers categorize “employees into the architecture based
 27 upon the work that they are performing”). The Policy ensures that, “no matter where the work is

28 ⁶ Unless otherwise stated, citations to exhibits refer to exhibits of the Pilotin Declaration.

1 happening . . . if the work is similar,” employees have the same job title. Albert Depo. at 96:7-10.
 2 This is because the Policy makes clear that “JA decisions are based on the job not the person.”
 3 Ex. 2 at HP00002350.

4 The JA Policy begins at a high level of classification, categorizing employees into various
 5 groups and subgroups that ultimately culminate in a specific Job Title. Ex. 1 at HP00001263 (JA
 6 Policy is intended “to manage and sustain the structure of the company workforce by organizing
 7 and classifying work into globally consistent job levels.”). At the highest level, jobs are
 8 methodically categorized based on “Job Functions,” which are then “subdivided into Job Families
 9 based on type of work.” Ex. 2 at HP00002344; *see also* FLSA Order at 5:19-20. In turn, Job
 10 Families are subdivided into “Global Job Levels.” Ex. 2 at HP00002347; Ex. 1 at HP00001264.
 11 The Job Level defines “job responsibilities & requirements” and determines whether an employee
 12 is classified as exempt from overtime pay. Ex. 2 at HP00002339-40; Albert Depo. at 123:4-11
 13 (explaining how Job Levels determine exemption status); *see also* FLSA Order at 6:12-13.

14 HP classifies its employees into one of three categories, each of which has its separate set
 15 of Job Levels: “Individual Contributor,” “Supervisor/Manager,” or “Executive.” Ex. 1 at
 16 HP00001264-65. In contrast to Managers, Individual Contributors do not manage other
 17 employees and do not have “hire/fire authority [or] responsibility for performance management or
 18 salary decisions.” Albert Depo. at 95:25-96:2; *see also* Ex. 1 at HP00001264 (defining an
 19 “Individual contributor” as “roles where no direct people management responsibilities exist”); Ex.
 20 4 (Ortolani Depo.) at 42:25-43:7 (distinguishing an “individual contributor” as a “nonleader”
 21 from a leader, who is “[s]omeone who is responsible for managing or leading employees”).
 22 Within the Individual Contributor category, there are five standard Job Levels: Entry,
 23 Intermediate, Specialist, Expert, and Master. Ex. 2 at HP00002340. Individual Contributors in
 24 these Job Levels are uniformly classified as exempt from overtime pay in the United States. Ex. 2
 25 at HP00002340; Ex. 1 at HP00001264.

26 An HP employee’s Job Title reflects the Job Function, Job Family, and Job Level into
 27 which she is classified. Ex. 2 at HP00002346; *see also* Albert Depo. at 97:10-14 (explaining that
 28 employees are “mapped” by “identifying the appropriate job function, the appropriate family, and

1 then the appropriate level, based upon the content of work that that employee is performing and
 2 the level of work that that employee is performing”). Each Job Title has a standardized job
 3 description, which identifies “the responsibilities and requirements associated with a particular
 4 job title.” Ex. 2 at HP00002348. As HP’s Rule 30(b)(6) designee explained, a Job Title’s job
 5 description explains the “[p]rimary” or “key” duties “that you would expect a particular job to
 6 have.” Albert Depo. at 134:4-5, 19-21 (stating that “primary” and “key” are used
 7 “interchangeably”); *id.* at 88:25-89:3 (“If I’m a TC1, the job description clearly outlines for me
 8 what a TC1 is, in terms of the roles and responsibilities, the knowledge, scope and impact.”).
 9 Employees in a particular Job Title perform the work set forth in the job description applicable to
 10 all employees in that Job Title. *Id.* at 162:13-14; FLSA Order at 7:9-12.

11 If an employee’s job duties change, she is “re-mapped” (*i.e.*, reassigned) to a new Job
 12 Title that better reflects her responsibilities. Albert Depo. at 161:13-17 (“So if a . . . particular
 13 individual employee’s responsibilities have changed, then the expectation of the company is that
 14 the manager would map the employee to a job that represents what he or she is doing.”); *id.* at
 15 98:11 (explaining that if employees’ responsibilities changed, one “would . . . remap them to
 16 reflect that change in responsibilities”); FLSA Order at 7:12-13.

17 **2. Technical Solutions Consultants are non-managers whom HP**
 18 **uniformly classifies as exempt.**

19 Under the JA Policy, all TSCs fall under the “Services” Job Function and the “Customer
 20 Solutions Center – Technical” Job Family. Ex. 5 at HP000000001; Ex. 6 at HP00008435; FLSA
 21 Order at 5:22-6:2. The State Classes include only TSC Is, TSC IIs, and TSC IIIs. The JA Policy
 22 provides that employees with these titles are Individual Contributors who fall within the Entry,
 23 Intermediate, and Specialist Job Levels, respectively. Ex. 6 at HP00008435 (showing Job Levels
 24 for TSC I-III). These Job Levels are the three lowest in the Individual Contributor category;
 25 those TSCs in the Expert and Master Job Levels are not included in the State Classes. Ex. 2 at
 26 HP00002340; Ex. 6 at HP00008435. The JA Policy uniformly classifies TSC Is, IIs, and IIIs as
 27 exempt. Ex. 2 at HP00002340.
 28

As noted above, the JA job description for TSCs defines their primary job duties. Albert Depo. at 134:4-5, 19-21; *see generally* Ex. 5 at HP00000001-2. The job description explains that employees in the TSC I, II, and III positions share the following responsibilities, among others:

- “Successfully resolve technical issues (hardware and software) from incoming internal or external businesses and end user’s contacts and proactive notification systems.”
- “Respond to service, product, technical, and customer-relations questions on subjects such as features, specifications, and repairs on current and discontinued products, parts, and options, based on customer entitlement[.]”
- Work with customers “to avoid or reduce problem occurrence.”

Id. As explained further below, HP’s Rule 30(b)(6) witnesses’ testimony and the declarations of Class Members submitted herewith confirm that these are TSCs’ primary job duties.

By HP’s own job descriptions, a TSC I, II, or III is not defined to be a “trusted advisor for peers and customers alike” or a “subject matter expert.” *See* Ex. 5 at HP00000004. They are not required to have a four-year college education. *See id.* at HP00000003. Moreover, to perform their roles, they need no more than three years of “experience in relevant technologies and customer environments.” *See id.* at HP00000003.

C. Class Members Work In Organizations That Provide Technical Support for HP Hardware and Software Products.

The State Classes include only TSCs who were or are employed by one of three HP organizations providing technical support for HP products: (1) HP Enterprise Group, Customer Solutions Center (“Enterprise Group”); (2) HP Software: Support Delivery / IMBU Support (“HPSW Support”); or (3) HP Software: Enterprise Security Products (“ESP”). TSC Is, IIs, and IIIs in these organizations are the quintessential help desk employees, whose classification as properly exempt or non-exempt may be determined with common proof.

According to HP’s Rule 30(b)(6) designees, each of these organizations provide support for HP products, with the Enterprise Group principally supporting HP hardware and, as their names suggest, the HP Software organizations supporting HP software. Ex. 7 (HPSW 30(b)(6) Depo.) at 11:18-12:4 (explaining that HPSW Support supports software products); Ex. 8 (Enter.

30(b)(6) Depo.) at 99:3-23 (explaining that Enterprise Group supports hardware); Ex. 9 (ESP 30(b)(6) Depo.) at 23:10-14 (discussing ESP's position under umbrella of HP Software). Each of these organizations follows the JA Policy. HPSW 30(b)(6) Depo. at 58:20-23; Enter. 30(b)(6) Depo. at 54:17-55:4; ESP 30(b)(6) Depo. at 32:17-19. Consistent with that Policy, these organizations designate individuals who perform technical troubleshooting as TSCs. HPSW 30(b)(6) Depo. at 46:24-25; Enter. 30(b)(6) Depo. at 55:5-56:12, 57:11-59:5, 65:2-24; ESP 30(b)(6) Depo. at 29:8-12; 40:2-14; 41:25-42:6. Importantly, these organizations—and, by extension, the TSCs who work in them—do not design, develop, or engineer the HP products they support.⁷ Nor do these organizations consult with customers to develop or customize their computer systems.⁸ Rather, TSCs in each of these organizations all do the same thing: they perform “break fix” work to resolve HP's customers' problems through a regimented troubleshooting process.⁹

⁷ HPSW 30(b)(6) Depo. at 147:22-148:19, 153:14-16, 154:21-25 (explaining that R&D is outside of the HPSW Support organization and “they are the developers, the writers of the products”); Enter. 30(b)(6) Depo. at 44:6-47:5, 65:21-24; 105:21-106:3 (explaining that TSCs fall in three tiers of customer support, and escalate to a separate R&D group and that TSC's primary job duty is customer support break/fix work); ESP 30(b)(6) Depo. at 45:20-25 (explaining that R&D, which is separate from the support team, includes the “people who develop the code [and] who write the software product itself”), 50:6-20, 53:22-23 (explaining that TSCs “would file the bugs . . . with the FastTrack team,” which “is an R&D team that do not have the technical consulting job families or titles”); Benedict Decl. ¶¶ 14-15; Mustain Decl. ¶¶ 14-15; Vieira Decl. ¶¶ 14-15; Decl. 1 ¶¶ 13-15; Decl. 2 ¶¶ 14-15; Decl. 3 ¶¶ 14-15; Decl. 4 ¶¶ 14-16; Decl. 5 ¶¶ 14-15;; Decl. 6 ¶¶ 13-15; Decl. 7 ¶¶ 14-15; Decl. 8 ¶¶ 15-16; Decl. 9 ¶¶ 14-15 Decl. 10 ¶¶ 14-15; Decl. 11 ¶¶ 14-15; Decl. 12 ¶¶ 16-18; Decl. 13 ¶¶ 13-15; Decl. 14 ¶¶ 15-16; Decl. 15 ¶¶ 14-15.

⁸ *E.g.*, HPSW 30(b)(6) Depo. at 54:12-25 (explaining that those in Professional Services, outside HPSW Support, “do client consultancy work”); Enter. 30(b)(6) Depo. at 36:7-16 (distinguishing between support and consulting); ESP 30(b)(6) Depo. at 29:3-19 (distinguishing between “Professional Services” and ESP, noting that “Professional Services” does not have TSCs). Benedict Decl. ¶ 9; Mustain Decl. ¶ 9; Vieira Decl. ¶ 9; Decl. 1 ¶ 9; Decl. 2 ¶ 9; Decl. 3 ¶ 9; Decl. 4 ¶ 10; Decl. 5 ¶ 9; Decl. 6 ¶ 9; Decl. 7 ¶ 9; Decl. 8 ¶ 10; Decl. 9 ¶ 9; Decl. 10 ¶ 9; Decl. 11 ¶ 9; Decl. 12 ¶ 9; Decl. 13 ¶ 9; Decl. 14 ¶ 9; Decl. 15 ¶ 9;

⁹ *See, e.g.*, HPSW 30(b)(6) Depo. at 76:5-77:7, 114:9-15 (a TSC serves as “a technical engineer that provides support for . . . customers” in HPSW Support, which “primarily deal[s] with a break fix situation”); Enter. 30(b)(6) Depo. at 105:21-106:3 (confirming that the Customer Solutions Center performs “Break Fix support”); ESP 30(b)(6) Depo. at 42:1-6 (noting that TSCs “primary responsibility is to provide the support function to our customers, “ which includes “fielding customers' . . . problems, issues, bugs, bug reports, et cetera”); Benedict Decl. ¶¶ 6, 10-13; Mustain Decl. ¶¶ 6, 10-13; Vieira Decl. ¶¶ 6, 10-13; Decl. 1 ¶¶ 6, 10-13; Decl. 2 ¶¶ 6, 10-13; Decl. 3 ¶¶ 6, 10-13; Decl. 4 ¶¶ 7, 11-14; Decl. 5 ¶¶ 6, 10-13; Decl. 6 ¶¶ 6,10-13; Decl. 7 ¶¶ 6, 10-13; Decl. 8 ¶¶ 7, 11-14; Decl. 9 ¶¶ 6, 10-13; Decl. 10 ¶¶ 6, 10-13; Decl. 11 ¶¶ 6, 10-13; Decl. 12 ¶¶ 6, 10-16; Decl. 13 ¶¶ 6, 10-15; Decl. 14 ¶¶ 6, 10, 12-15; Decl. 15 ¶¶ 6, 10-13.

1 TSCs in these organizations follow detailed procedures in responding to customer
 2 requests. After a customer contacts HP about a problem with their hardware or software, a ticket
 3 or case is opened in HP's "SPARKS" or "OPT" system.¹⁰ The TSC then attempts to resolve the
 4 problem, following strict HP procedural guidelines. [REDACTED]

5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]. TSCs in ESP follow similarly regimented procedural guidelines
 10 governing every aspect of their day to day work. [REDACTED]

11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]. Even the amount of time TSCs have
 19 to respond to customers and elevate cases is predetermined, depending on the severity of the
 20 incident.¹¹

21
 22 ¹⁰ HPSW 30(b)(6) Depo. at 91:16-92:4 (explaining how incoming incidents are created, noting
 23 that "a case gets logged in SPARKS"); Enter. 30(b)(6) Depo. at 74:1-21 (explaining that "One
 24 Page Tool [OPT] is the tool that my employees in Global Support Delivery use to record case
 information"); ESP 30(b)(6) Depo. at 95:15-18 (explaining that a "technical support consultant
 opens a SPARKS ticket" after "a customer calls in with a new problem"); [REDACTED]

25 [REDACTED]
 26 [REDACTED] Benedict Decl.
 27 ¶ 11; Mustain Decl. ¶ 11; Vieira Decl. ¶ 11; Decl. 1 ¶ 11; Decl. 2 ¶ 11; Decl. 3 ¶ 11; Decl. 4 ¶ 12;
 Decl. 6 ¶ 11; Decl. 7 ¶ 11; Decl. 8 ¶ 12; Decl. 9 ¶ 11; Decl. 10 ¶ 12; Decl. 11 ¶ 11; Decl. 12 ¶ 11;
 Decl. 13 ¶ 11; Decl. 14 ¶ 12; Decl. 15 ¶ 11;

28 ¹¹ HPSW 30(b)(6) Depo. at 103:8-19 (explaining that customer's contract defines time to respond
 to customer); Enter. 30(b)(6) Depo at 76:22-80:8, [REDACTED]

Further, in attempting to resolve a customer's problem, the TSC relies on internal HP knowledge bases (*e.g.*, "iROCK," or "SAW,"), case notes in prior tickets, and/or external search engines (*e.g.*, Google).¹² Once the TSC searches for and identifies a technical solution for the customer's problem, she either sends the document providing the fix instructions to the customer, or logs onto the customer's machine remotely and implements the fix herself.¹³ The ticket is then resolved, and TSCs are required to note the resolution in HP's ticketing system so that the ticket will be a resource if another customer experiences the same problem in the future.¹⁴ If the TSC cannot promptly locate a fix for the problem, she must elevate the case to the next support level.¹⁵

TSCs are uniformly circumscribed to this limited troubleshooting role. They do not develop software or hardware, write code, or create fixes for bugs in the hardware or software being supported. *See, supra*, nn.7-8. Nor do they consult with customers regarding how their

[REDACTED]; ESP 30(b)(6) Depo. at 96:24-97:8 (explaining time-to-respond requirements under SLAs); Benedict Decl. ¶ 11; Mustain Decl. ¶ 11; Vieira Decl. ¶ 11; Decl. 1 ¶ 11; Decl. 2 ¶ 11; Decl. 3 ¶ 11; Decl. 4 ¶ 12; Decl. 6 ¶ 11; Decl. 7 ¶ 11; Decl. 8 ¶ 12; Decl. 9 ¶ 11; Decl. 10 ¶ 11; Decl. 11 ¶ 11; Decl. 12 ¶ 12; Decl. 13 ¶ 10; Decl. 14 ¶ 12; Decl. 15 ¶ 11.

¹² HPSW 30(b)(6) Depo. at 123:19-124:3 (explaining that TSCs check knowledge base first when attempting to resolve a problem); Enter. 30(b)(6) Depo. at 81:5-7 ("[Y]ou go to the knowledge database to look up whether it has a correlation to the problem you're trying to solve"); ESP 30(b)(6) Depo. at 67:20-25 (explaining iRock is a "document repository for a lot of the knowledge within the ESP org"); [REDACTED]

[REDACTED]; Benedict Decl. ¶¶ 10-13; Mustain Decl. ¶¶ 10-13; Vieira Decl. ¶¶ 10-13; Decl. 1 ¶¶ 10-13; Decl. 2 ¶¶ 10-13; Decl. 3 ¶¶ 10-12; Decl. 4 ¶¶ 11-13; Decl. 5 ¶¶ 10-12; Decl. 6 ¶¶ 10-12; Decl. 7 ¶¶ 10-13; Decl. 8 ¶¶ 11-13; Decl. 9 ¶¶ 10-12; Decl. 10 ¶¶ 10-13; Decl. 11 ¶¶ 10-13; Decl. 12 ¶¶ 10-14; Decl. 13 ¶¶ 10-13; Decl. 14 ¶¶ 10-13; Decl. 15 ¶¶ 10-12.

¹³ Benedict Decl. ¶ 12; Mustain Decl. ¶ 12; Vieira Decl. ¶ 12; Decl. 1 ¶ 12; Decl. 2 ¶ 12; Decl. 3 ¶ 12; Decl. 4 ¶ 13; Decl. 6 ¶ 12; Decl. 7 ¶ 12; Decl. 8 ¶ 13; Decl. 9 ¶ 12; Decl. 10 ¶ 12; Decl. 11 ¶ 12.

¹⁴ [REDACTED]; Mustain Decl. ¶ 11; Vieira Decl. ¶ 11; Decl. 1 ¶ 11; Decl. 2 ¶ 11; Decl. 3 ¶ 11; Decl. 4 ¶ 12; Decl. 5 ¶ 12; Decl. 6 ¶ 11; Decl. 7 ¶ 11; Decl. 8 ¶ 12; Decl. 9 ¶ 11; Decl. 10 ¶ 11; Decl. 11 ¶ 11; Decl. 12 ¶ 12; Decl. 13 ¶ 12; Decl. 14 ¶¶ 10, 12; Decl. 15 ¶ 11.

¹⁵ HPSW 30(b)(6) Depo. at 95:3-96:8 (explaining use of different support levels); Enter. 30(b)(6) Depo. at 44:6-45:4 (explaining progression of cases through levels of support); ESP 30(b)(6) Depo. at 46:2-7; 47:18-50:5 (same); [REDACTED]; Benedict Decl. ¶ 13; Mustain Decl. ¶ 13; Vieira Decl. ¶ 13; Decl. 1 ¶ 13; Decl. 2 ¶ 13; Decl. 3 ¶ 13; Decl. 4 ¶ 14; Decl. 5 ¶ 13; Decl. 6 ¶ 13; Decl. 7 ¶ 13; Decl. 8 ¶ 14; Decl. 9 ¶ 13; Decl. 10 ¶ 13; Decl. 11 ¶ 13; Decl. 12 ¶ 14; Decl. 13 ¶ 13; Decl. 14 ¶ 14; Decl. 15 ¶ 13.

1 computer systems should be designed. *Id.* Such work is done by other groups, all of which are
 2 outside of the support organizations at issue. *Id.*

3 **II. ARGUMENT**

4 **A. Legal Standard for Class Certification**

5 Class certification is appropriate if: “(1) the class is so numerous that joinder of all
 6 members is impracticable; (2) there are questions of law or fact common to the class; (3) the
 7 claims or defenses of the representative parties are typical of the claims or defenses of the class;
 8 and (4) the representative parties will fairly and adequately protect the interests of the class.”
 9 Fed. R. Civ. P. 23(a); *see also Nelson*, 2015 WL 1778326, at *4 (explaining requirements of Rule
 10 23(a)). For a class seeking damages, there must also be questions of law or fact common to class
 11 members that predominate over any questions affecting only individual members, and the class
 12 action must be superior to other available methods for fairly and efficiently adjudicating the
 13 controversy. Fed. R. Civ. P. 23(b)(3).

14 In determining whether a class should be certified “the question is not whether the
 15 plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether
 16 the requirements of Rule 23 are met.” *United Steel, Paper & Forestry, Rubber, Mfg. Energy v.*
 17 *ConocoPhillips Co.*, 593 F.3d 802, 808 (9th Cir. 2010). “Merits questions may be considered to
 18 the extent—but only to the extent—that they are relevant to determining whether the Rule 23
 19 prerequisites for class certification are satisfied.” *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*,
 20 133 S. Ct. 1184, 1195 (2013) (citations omitted); *Nelson*, 2015 WL 1778326, at *5 (same).

21 **B. Rule 23(a)(1): Numerosity is Satisfied Because There Are Sufficiently** 22 **Numerous Class Members Such that Joinder is Impracticable.**

23 Rule 23(a)(1) requires class members to be “so numerous that joinder of all members is
 24 impracticable.” There is not “a specific number of class members required for numerosity.” *In re*
 25 *Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 350 (N.D. Cal. 2005) (Jenkins, J.). While the
 26 requirement is presumptively met when there are 40 or more class members, courts have certified
 27 classes with as few as 14 class members. *See, e.g., In re Cirrus Logic Secs.*, 155 F.R.D. 654, 656
 28 (N.D. Cal. 1994); *see also Nelson*, 2015 WL 1778326, at *5 (“Courts have repeatedly held that

1 classes comprised of ‘more than forty’ members presumptively satisfy the numerosity
2 requirement.”) (citing *DuFour v. BE LLC*, 291 F.R.D. 413, 417 (N.D. Cal. 2013)).

3 “A court may make common sense assumptions to support a finding that joinder would be
4 impracticable.” *In re Rubber Chems.*, 232 F.R.D. at 350. Factors a court may consider with
5 respect to numerosity include “the geographical diversity of class members, the ability of
6 individual members to institute separate suits, and the nature of the underlying action and the
7 relief sought.” *Nat’l Ass’n of Radiation Survivors v. Walters*, 111 F.R.D. 595, 599 (N.D. Cal.
8 1986) (citations omitted) (Patel, J.); *see also Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp.
9 2d 1114, 1121 (E.D. Cal. 2009) (same). Whether joinder is impracticable depends on the “facts
10 and circumstances of each case.” *Marilley v. Bonham*, No. C-11-02418-DMR, 2012 WL 851182,
11 at *3 (N.D. Cal. Mar. 13, 2012) (Ryu, M.J.); *Torres v. Mercer Canyons, Inc.*, No. 1:14-cv-
12 03032-SAB, 2015 WL 1641519, at *3 (E.D. Wash. Apr. 8, 2015) (same).

13 According to HP’s data, the California, Colorado, and Massachusetts classes have 213,
14 147, and 43 members respectively. Pilotin Decl. ¶¶ 4(a)-4(c). Because membership in each State
15 Class exceeds 40, each of them presumptively satisfy numerosity. *See, e.g., Nelson*, 2015 WL
16 1778326, at *5 (observing presumption of numerosity when class membership exceeds forty)
17 (citation omitted).

18 Further, common sense shows that joinder is impracticable as to each of the State Classes.
19 First, it is unlikely that individual employees will institute separate suits. As federal and state
20 courts alike recognize, fear of retaliation severely curtails the likelihood individual employees
21 will institute separate law suits, making employment class actions valuable. *See, e.g., Gentry v.*
22 *Superior Court*, 42 Cal. 4th 443, 460 (2007) (noting that “federal courts have widely recognized
23 that fear of retaliation for individual suits against an employer is a justification for class
24 certification in the arena of employment litigation”) (citing cases); *see also O’Brien v. Encotech*
25 *Const. Servs., Inc.*, 203 F.R.D. 346, 351 (N.D. Ill. 2001) (finding numerosity met by 30-person
26 class seeking overtime because “a very important concern is the fear of retaliation for individual
27 employees required to file individual claims”). Here, this fear is amplified when many Class
28 Members are current HP employees. *See also Romero v. Producers Dairy Foods, Inc.*, 235

1 F.R.D. 474, 485 (E.D. Cal. 2006) (noting that “numerosity requirement is more readily met where
 2 a class contains employees suing their present employer”). Second, individual employees are not
 3 likely to sue to recover overtime in light of the time and financial burdens litigation places on
 4 litigants. Finally, Class Members may be geographically dispersed: it is not apparent that all
 5 Class Members still reside in the states in which they were once employed. And, even if they did
 6 and even if they elected to sue, it would be inefficient for a multitude of lawsuits to be prosecuted
 7 throughout these states. *See, e.g., O’Brien*, 203 F.R.D. at 350 (“Were plaintiffs to file multiple
 8 claims under multiple laws in multiple fora, precious judicial resources would be wasted on
 9 duplicative lawsuits.”).

10 C. **Rule 23(a)(2): Commonality is Satisfied Because There Are Questions of Law**
 11 **and Fact Common to Members of the Proposed Classes.**

12 Federal Rule of Civil Procedure 23(a)(2) requires that “questions of law or fact common
 13 to the class” exist. “[C]ommonality requires that the class members’ claims depend upon a
 14 common contention such that determination of its truth or falsity will resolve an issue that is
 15 central to the validity of each claim in one stroke.” *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161,
 16 1165 (9th Cir. 2014) (citations and internal quotation marks omitted).

17 Commonality imposes only a “limited burden.” *Mazza v. Am. Honda Motor Company,*
 18 *Inc.*, 666 F.3d 581, 589 (9th Cir. 2012). So “long as there is even a single common question, a
 19 would-be class can satisfy” commonality. *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014)
 20 (citation and internal quotation marks omitted). To determine whether commonality is met, a
 21 court must consider “the nature of the underlying claims.” *Parsons*, 754 F.3d at 676 (citations
 22 omitted).

23 As explained further below, Plaintiffs present multiple common questions that can be
 24 resolved by common proof, thereby “generat[ing] common answers” that will “drive the
 25 resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011)
 26 (internal quotation and citation omitted).

1 **1. Class claims for overtime pay, waiting-time penalties, and inadequate**
 2 **wage statements entail common questions of fact and law.**

3 Under the laws of their respective states, the State Classes assert claims for HP's failure to
 4 provide overtime pay, for waiting-time penalties, and for HP's failure to maintain adequate wage
 5 statements. These claims pose common legal questions, including (1) whether any applicable
 6 state overtime exemption applies to TSCs, and (2) whether HP failed to maintain adequate time
 7 records for Class Members. Likewise, the claims pose common factual questions central to these
 8 claims, including

9 (1) whether HP uniformly classifies TSCs as exempt from overtime
 10 pay requirements, so as to deprive them of overtime pay;

11 (2) whether TSCs' duties and responsibilities involve work related
 to HP's management policies or HP's general business operations;

12 (3) whether TSCs customarily and regularly exercise discretion and
 13 independent judgment;

14 (4) with respect to the California Class, whether TSCs determine
 hardware, software, or system functional specifications;

15 (5) with respect to the California Class whether TSCs design,
 16 develop, document, analyze, create, test, or modify computer
 systems or programs based on and related to user or system design
 17 specifications; and

18 (6) with respect to the California Class, whether TSCs document,
 19 test, create, or modify computer programs related to the design of
 software or hardware for computer operating systems.

20 Because common evidence shows that TSCs have the same primary job duties and are subject to
 21 HP's uniform JA Policy, these questions can be resolved through a classwide proceeding.

22 These various, significant common legal and factual questions more than sufficiently
 23 satisfy commonality. Courts routinely hold that commonality exists in overtime misclassification
 24 cases where the plaintiff simply alleges that that all subject employees faced a common wrong by
 25 being "misclassified as exempt." *Greko v. Diesel U.S.A., Inc.*, 277 F.R.D. 419, 426 (N.D. Cal.
 26 2011) (Seeborg, J.); *Bowerman v. Field Asset Servs., Inc.*, No. 13-CV-00057-WHO, 2015 WL
 27 1321883, at *14 (N.D. Cal. Mar. 24, 2015) (finding commonality met because the "key legal
 28 issue underlying this case is whether putative class members were misclassified under California

law as independent contractors instead of employees”) (Orrick, J.); *see also Grenawalt v. AT&T Mobility*, No. 11 Civ. 2664 (ALC), 2014 WL 4832318, at *4 (S.D.N.Y. Sept. 29, 2014) (holding commonality met because of allegation that employer “perpetrated a common wrong against them in misclassifying them as independent contractors and failing to pay them overtime and regular wages in connection with their work”) (citing cases); *Perez v. Allstate Ins. Co.*, No 11-CV-1812 (JFB)(AKT), 2014 WL 4635745, at *15 (E.D.N.Y. Sept. 16, 2014) (holding commonality met based on question of whether class members “are properly exempt from the overtime requirements of” state law); *Bradley v. Networkers Int’l, LLC*, 211 Cal. App. 4th 1129, 1143 (2012) (“[c]laims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment”) (quoting *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1033 (2012)).

2. **The proposed California Class’s additional claims for missed meal and rest breaks and unfair competition raise common questions of fact and law.**

In addition, the proposed California Class also asserts claims for missed meal and rest breaks and unfair competition. These claims pose common legal questions, including (1) whether HP violated California’s UCL by violating California’s labor laws and (2) whether HP complied with California’s requirement to provide meal and rest breaks. There are additional common factual questions that pertain specifically to the proposed California Class, including (1) whether HP lacks a policy relieving TSCs of all duties so they may take the requisite meal and rest breaks and (2) whether HP failed to pay for missed meal and rest breaks. *See Bradley*, 211 Cal. App. 4th at 1150 (holding common question predominated where plaintiffs “challeng[ed] the fact that the employer’s lack of a policy violated the law”) (emphasis in original); *see also Wang v. Chinese Daily News, Inc.*, No. 2:04-cv-01498-CBM(AJWx), 2014 WL 1712180, at *7 (C.D. Cal. Apr. 15, 2014) (“[C]urrent California and federal law affirm that [the defendant’s] uncontested lack of any meal or break policy is strong evidence favoring class certification in this matter.”)

1 **D. Rule 23(a)(3): Typicality is Satisfied Because Plaintiffs' Claims are**
2 **Reasonably Co-Extensive with Those of the Absent Class Members.**

3 To satisfy typicality, Plaintiffs' claims must be "reasonably co-extensive with those of
4 absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp.*, 150
5 F.3d 1011, 1020 (9th Cir. 1998). "The test of typicality is whether other members have the same
6 or similar injury, whether the action is based on conduct which is not unique to the named
7 plaintiffs, and whether other class members have been injured by the same course of conduct."
8 *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citation and
9 internal quotation marks omitted). This is a permissive standard. *Nelson*, 2015 WL 1778326, at
10 *7 (citing *Ries v. Ariz. Beverages USA*, 287 F.R.D. 523, 539 (N.D. Cal. 2012)).

11 Each Plaintiff was a TSC who received no overtime pay while he was employed as a TSC
12 by HP, and each Plaintiff has wage and hour claims that are typical of the absent Class Members.
13 Those claims stem from the same conduct: HP's policies requiring TSC I, II, or IIIs to perform
14 non-exempt work, while uniformly misclassifying them as exempt from overtime pay
15 requirements. Typicality is therefore met.

16 **E. Rule 23(a)(4), (g): Plaintiffs and Their Counsel will Fairly and Vigorously**
17 **Represent the Interests of the State Classes.**

18 The adequacy determination requires answering "two questions: '(1) do the named
19 plaintiffs and their counsel have any conflicts of interest with other class members and (2) will
20 the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'"
21 *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) (citation omitted). "Adequate
22 representation depends on, among other factors, an absence of antagonism between
23 representatives and absentees, and a sharing of interest between representatives and absentees."
24 *Id.* (citation omitted). "Adequate representation is usually presumed in the absence of contrary
25 evidence." *Californians for Disability Rights, Inc. v. Cal. Dep't of Transp.*, 249 F.R.D. 334, 349
26 (N.D. Cal. 2008) (Armstrong, J.) (citations omitted); *Brown v. Hain Celestial Grp., Inc.*, No. C
27 11-03082 LB, 2014 WL 6483216, at *14 (N.D. Cal. Nov. 18, 2014) (same) (Beeler, J.).
28

1 Plaintiffs readily satisfy the adequacy requirement. They share the same grievances
 2 against HP as the absent Class Members and have the same interests as the absent Class Members
 3 in obtaining redress from HP. They will vigorously prosecute this action to recover overtime pay
 4 and related relief from HP.

5 Class Counsel likewise will vigorously prosecute this action on Plaintiffs' and Class
 6 Members' behalf, thereby satisfying the requirements of Rule 23(a)(4) and 23(g). Class Counsel
 7 investigated this case and filed the original complaint Mr. Benedict's behalf. Dermody Decl. ¶ 6.
 8 Both firms have substantial experience in class actions, including wage and hour class actions.
 9 Dermody Decl. ¶¶ 4-5, Ex. A; Sagafi Decl. ¶¶ 4-5. Moreover, both firms have been appointed
 10 lead counsel in numerous such cases. Dermody Decl. ¶ 5; Sagafi Decl. ¶ 5. Both firms will
 11 commit the necessary resources to vindicate Plaintiffs' and Class Members' rights. Dermody
 12 Decl. ¶ 8; Sagafi Decl. ¶ 6.

13 **F. Rule 23(b)(3): Plaintiffs Satisfy the Predominance and Superiority**
 14 **Requirements.**

15 **1. Common questions of law and fact predominate.**

16 Federal Rule of Civil Procedure 23(b)(3) requires that "questions of law or fact common
 17 to class members predominate over any questions affecting only individual members[.]" This
 18 analysis "focuses on the relationship between the common and individual issues in the case and
 19 tests whether proposed classes are sufficiently cohesive to warrant adjudication by
 20 representation." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 545 (9th Cir. 2013) (citations
 21 and internal quotation marks omitted). "When common questions present a significant aspect of
 22 the case and they can be resolved for all members of the class in a single adjudication, there is
 23 'clear justification' for certifying a class action." *Nelson*, 2015 WL 1778326, at *9 (quoting
 24 *Hanlon*, 150 F.3d at 1022). Importantly, predominance does not require "that each element of [a
 25 plaintiff's] claim is susceptible to classwide proof." *Amgen*, 133 S. Ct. at 1196 (citation and
 26 internal brackets and quotation marks omitted). Courts have "held that common questions
 27 predominated even though certain class members' circumstances varied and some of the
 28 defendant's practices would have to be proven by anecdotal testimony." *Delagarza v. Tesoro*

1 *Refining & Mktg. Co.*, No. C–09–5803 EMC, 2011 WL 4017967, at *12 (N.D. Cal. Sept. 8, 2011)
 2 (Chen, J.) (citation omitted).

3 In a misclassification action like this one, the “balance between individual and common
 4 issues” hinges on the existence of “comprehensive uniform policies detailing the job duties and
 5 responsibilities of employees [which] carry great weight for certification purposes.” *In re Wells*
 6 *Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 958-59 (9th Cir. 2009) (citing *Damassia*
 7 *v. Duane Reade, Inc.*, 250 F.R.D. 152, 160 (S.D.N.Y. 2008); *see also Perez*, 2014 WL 4635745,
 8 at *7 (“[U]niform corporate procedures and policies are unquestionably probative of . . . actual
 9 duties.”) (citations and internal quotation marks omitted). “Such centralized rules, to the extent
 10 they reflect the realities of the workplace, suggest a uniformity among employees that is
 11 susceptible to common proof.” *Wells Fargo*, 571 F.3d at 958-59. Predominance can be met
 12 where, as here, “the employer exercised some level of centralized control in the form of
 13 standardized hierarchy, standardized corporate policies and procedures governing employees,
 14 uniform training programs, and other factors susceptible to common proof.” *Vinole v.*
 15 *Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009) (citing cases). “[U]niformity
 16 in work duties and experience . . . diminish the need for individualized inquiry.” *Id.* at 947
 17 (quoting affirmed lower court opinion).

18 Here, there are various types of undisputed common evidence showing that common
 19 questions predominate over individual inquiries. First, HP uniformly classifies TSCs as exempt.
 20 *See Ex. 2 at HP00002340.* As the Ninth Circuit instructed in *Wells Fargo*, “an exemption policy
 21 is a permissible factor for consideration under Rule 23(b)(3).” 571 F.3d at 957. This is because
 22 “[a]n internal policy that treats all employees alike for exemption purposes suggests that the
 23 employer believes some degree of homogeneity exists among the employees.” *Id.*; *see also*
 24 *Morrison v. Ocean State Jobbers, Inc.*, 290 F.R.D. 347, 359 (D. Conn. 2013) (noting that
 25 defendant’s blanket exemption “decision to classify all [employees] as exempt is relevant to
 26 deciding whether the Massachusetts plaintiff’s jobs were similar in ways material to the
 27 establishment of the exemption criteria”) (citation and internal quotation marks omitted).

1 However, HP's exemption policy is not the only common evidence binding Class Members
2 together.

3 Second, HP's JA Policy defines and constrains what TSCs do. As explained above, the
4 JA Policy provides a hierarchical classification system that gives employees a job title based on
5 "what he or she is doing." *E.g.*, Albert Depo. at 161:16-17; *see generally, supra*, § I.B.1. In other
6 words, employees are classified as TSCs because they all do the same thing. What TSCs do is
7 encapsulated by the uniform job description the JA Policy provides, which summarizes the
8 "[p]rimary" or "key duties that you would expect a [TSC] to have." Albert Depo. at 134:4-5, 19-
9 21; *id.* at 132:20-22 (noting that job description "identif[ies] the most critical responsibilities, the
10 top five critical responsibilities"). For TSCs, these primary duties revolve around "resolv[ing]
11 technical issues" and answering customer questions. Ex. 5 at HP00000001. The JA Policy
12 likewise defines the level of expertise and "impact" TSCs in the State Classes have: they are not
13 high-level advisors or "subject matter expert[s]." *Id.* at HP00000004. This is important because
14 it further limits what TSCs in the State Classes do: by operation of the JA Policy, if the TSCs in
15 the State Classes were high-level advisors or subject-matter experts, or if they acquired such
16 responsibilities over time, they would be re-classified as a TSC IV or V, and therefore excluded
17 from the case. Albert Depo. at 161:13-17 (explaining that, if a "particular individual employee's
18 responsibilities have changed," he or she will be placed into a new job title); *id.* at 163:1-4
19 (explaining that "a manager is going to appropriately classify an employee based upon the type of
20 work they were doing and the level of work that they're doing"). Thus, the JA Policy is common
21 evidence of who TSCs are and what they do.

22 Third, the functions of the organizations in which Class Members work constitutes
23 common evidence of what TSCs do. HP structured its business units based on their functions.
24 Ex. 1 at HP00001263-64. As Rule 30(b)(6) witnesses testified, Class Members in the
25 organizations at issue here perform solely "help desk" responsibilities, supporting—but not
26 developing, engineering, or consulting with HP customers about—HP products. But if a
27 customer's case raises a technical flaw in one of HP's products, requiring re-programming the
28 product or addressing other issues under the hood, that is not a problem that a TSC in the

Enterprise Group, HPSW Support, or ESP handles. *See, supra*, nn.7, 9. Likewise, if a customer’s case raises an issue regarding what system may be appropriate for that customer’s needs, that is not addressed by a TSC in the State Classes. *See, supra*, n.8. In such cases, the TSC must refer the case to other HP employees outside of these organizations. *See, supra*, nn.7, 8.

Fourth, to perform their support work for these organizations, TSCs uniformly follow the same processes. *See, supra*, nn.10-11. HP’s process and technical documents thus present common proof of TSCs’ jobs. These documents detail the processes, procedures, and steps TSCs follow in supporting HP’s customers. *E.g.*, HPSW 30(b)(6) Depo. at 162:22-25 (explaining “process overview”); Enter. Group 30(b)(6) Depo. at 76:22-80:8; ESP 30(b)(6) Depo. at 58:11-12 (explaining “procedure document”). These standardized documents, as an HP Rule 30(b)(6) witness explained, are used “for our business consistency” and they show “how our business works at the end of the day.” HPSW 30(b)(6) Depo. at 86:21-22, 86:10-11; *see also id.* at 80:5 (“It’s a way of documenting the process.”). Indeed, this consistency is important to HP and its marketing. HP uses its documented standardized processes to obtain certification from industry groups such as the Technical Services Institute Association (“TSIA”). *Id.* at 85:24-86:15; *see also* [REDACTED]

[REDACTED]
[REDACTED]
(emphases added). Such a certification constitutes “recognition of [HP’s] operational or business excellence” and “creates sales opportunities” for HP. HPSW 30(b)(6) Depo at 167:17-168:5.

Fifth, the declarations of the named Plaintiffs and 15 Class Members corroborate the documentary evidence and HP’s Rule 30(b)(6) witnesses’ testimony. The declarations, taken together, reveal that Class Members perform the same job, demonstrating that HP’s JA Policy—by design—has successfully categorized employees doing the same work into the same job title.

Finally, with respect to the proposed California Class, HP’s lack of policy providing TSC’s with meal and rest breaks is common evidence for the class’s meal-and-rest break claim under the California Labor Code. As California courts have held, class certification is appropriate where an employer fails “to adopt a policy authorizing and permitting meal and rest breaks to its

1 technicians.” *Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 726 (2013);
 2 *see also Bradley*, 211 Cal. App. 4th at 1149; *Wang*, 2014 WL 1712180, at *7.

3 Such common evidence answers the question of what TSCs do, a central issue in this case
 4 for the State Classes as a whole. Courts routinely hold that Rule 23(b)(3) is met when presented
 5 with this kind of common evidence. *See, e.g., Vinole*, 571 F.3d at 947; *Nelson*, 2015 WL
 6 1778326, at *9; *Perez*, 2014 WL 4635745, at *20 (predominance met where the primary job
 7 duties of [class members] are largely similar for purposes of the . . . exemption determination”);
 8 *Damassia*, 250 F.R.D. at 159-61; *Boyd v. Bank of Am. Corp.*, 300 F.R.D. 431, 443 (C.D. Cal.
 9 2014).

10 The Court’s recent decision in *Nelson* is instructive. There, the Court found
 11 predominance met based on “common proof that relies in no small part on the nature of [the
 12 employees’] duties.” *Nelson*, 2015 WL 1778326, at *9. While the defendant insisted that “a
 13 determination of liability by the Court requires individualized inquiries regarding how DSMs
 14 actually perform their job duties,” the Court nevertheless certified the class, reasoning that
 15 “plaintiffs can still certify a class when they show uniformity in work duties and experiences that
 16 would diminish the need for individualized inquiry.” *Id.* at *9-10 (citation and internal quotation
 17 marks omitted). Similarly here, Plaintiffs present common proof—via standardized corporate
 18 policies and procedures governing employees’ work, as well as the consistent testimony of Class
 19 Members—of what TSCs do.

20 *Boyd* is another recent overtime misclassification case that also supports class certification
 21 here. There, as in *Nelson*, predominance was satisfied because, among other things, the “job
 22 descriptions of [the employees] are standardized nationwide,” the “[employees] receive their
 23 assignments through the same computer program . . . and they may not pick and choose those
 24 assignments,” the defendant “has standardized compensation policies that apply to all
 25 [employees],” and the defendant “promulgated several detailed guidelines to direct the conduct of
 26 [the employees].” 300 F.R.D. at 442-43 (citations and internal quotation marks omitted). As this
 27 Court did in *Nelson*, the *Boyd* court recognized that, while “[s]everal individual inquiries still
 28 remain,” a “close look” revealed “that common questions predominate over individual ones.” *Id.*

1 at 443 (citations and internal quotation marks omitted). The same facts supporting predominance
 2 *Boyd* exist here. TSCs work pursuant to a standardized job description that identifies their
 3 primary duties, their assignments are assigned through and recorded in centralized ticketing
 4 systems, they are uniformly classified as exempt, and they follow standardized, documented
 5 processes from centralized repositories that HP uses to obtain highly-marketable certifications.

6 Finally, *Damassia*, which the Ninth Circuit cited with approval in *Wells Fargo* and
 7 *Vinole*, likewise supports a finding of predominance. There, the district court held predominance
 8 was satisfied in part because “the duties and responsibilities of assistant managers are ‘centrally
 9 derived.’” 250 F.R.D. at 159 (citation omitted). The court noted that where “there is evidence
 10 that the duties of the job are largely defined by comprehensive corporate procedures and policies,
 11 district courts have routinely certified classes of employees challenging their classification as
 12 exempt, despite arguments about ‘individualized’ differences in job responsibilities.” *Id.* at 160
 13 (citing cases). That is precisely what HP’s JA Policy does here. As in *Damassia*, HP’s JA Policy
 14 centrally defines TSCs’ job duties and responsibilities. HP’s Rule 30(b)(6) witnesses’ testimony
 15 and Class Members’ declarations confirm the effectiveness of the JA Policy, showing that TSCs
 16 perform the same work.

17 To the extent that HP can point to any individualized issues between Class Members, they
 18 are not of “such a magnitude as to cause individual issues to predominate.” *Damassia*, 250
 19 F.R.D. at 160. Any differences it may cite now did not influence its decision to classify all TSCs
 20 as exempt, regardless of the business unit in which they work. *See Youngblood v. Family Dollar*
 21 *Stores, Inc.*, No. 09 Civ. 3176, 2011 WL 4597555, at *5 (S.D.N.Y. Oct. 4, 2011) (giving little
 22 weight to differences among class members cited by the defendant where such differences were
 23 not considered in classifying the class members as exempt); *Myers v. Hertz Corp.*, 624 F.3d 537,
 24 549 (2d Cir. 2010) (“[A] blanket [classification] policy . . . suggests the employer believes some
 25 degree of homogeneity exists among the employees, and is thus in a general way relevant to the
 26 [predominance] inquiry . . .”) (citation and internal quotation marks omitted).

2. **A class action is the superior method to adjudicate proposed class members' claims.**

Rule 23(b)(3) also requires a showing that “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” This requires the Court to determine “whether the objectives of the particular class action procedure will be achieved in the particular case.” *Nelson*, 2015 WL 1778326, at *10 (quoting *Hanlon*, 150 F.3d at 1023). In making this determination, a court may consider

(A) the class members’ interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3).

Here, these factors favor a superiority finding. First, Class Members likely have little interest in individually controlling the prosecution of separate actions. As already explained, because of the burdens of litigation and fears of retaliation, individual employees are unlikely to sue on their own. The Court previously held such retaliation concerns to support a finding of superiority. *Nelson*, 2015 WL 1778326, at *10 (explaining that class action was superior because “[a]llowing Plaintiffs to proceed in a representative capacity ensures that all class members will receive their day in court without requiring current employees . . . to risk their employment to receive that right”).

Second, Plaintiffs are unaware of any litigation with respect to recovering overtime pay for TSCs in California, Colorado, or Massachusetts.

Third, it is highly desirable to have the Class Members’ claims adjudicated in this court. HP is headquartered within the District and maintains substantial operations here. In addition, many Class Members work in or near the District. In fact, the largest concentration of Class Members is in California.

1 Finally, classwide resolution of Class Members' claims will be manageable. The central
 2 issue of liability will hinge on the factfinder's evaluation of the several categories of common
 3 proof outlined above, along with representative testimony regarding Class Members' daily duties.
 4 In *Tierno v. Rite Aid Corp.*, which the Ninth Circuit cited approvingly in *Vinole*, the court
 5 rejected the notion that "an overtime [misclassification] class action would necessarily
 6 'degenerate into a multitude of mini-trials.'" No. C 05-02520 TEH, 2006 WL 2535056, at *11
 7 (N.D. Cal. Aug. 31, 2006) (citing *Sav-On Drug Stores v. Superior Court*, 34 Cal. 4th 319, 332
 8 (2004)) (Henderson, J.). The court observed:

9 [C]ourts in overtime cases such as this may properly couple
 10 uniform findings on common issues regarding the proper
 11 classification of the position at issue with innovative procedural
 12 tools that can efficiently resolve individual questions regarding
 eligibility and damages. Such tools include administrative
 miniproceedings, special master hearings, and specially fashioned
 formulas or surveys.

13 *Id.*; see also *Boyd*, 300 F.R.D. at 444 (same). The same holds true here.

14 **III. CONCLUSION**

15 For the foregoing reasons, Plaintiffs respectfully request that the Motion for Class
 16 Certification be granted, with Mr. Benedict, Mr. Mustain, and Mr. Vieira serving as California,
 17 Colorado, and Massachusetts class representatives, respectively, and LCHB and O&G appointed
 18 as Class Counsel.

19 Dated: May 7, 2015

Respectfully submitted,

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